

**REMARKS**

Applicant hereby cancels claims 3, 8-13, 15, 18, 19, 21 and 23 without prejudice or disclaimer. Therefore, claims 1 and 4-7, 14, 16, 17, 20 and 22 are all the claims pending in the application.

**Rejection of claims 1, 8-14, 17-20 and 23 under § 102(e) as being anticipated by**

**Bensaou**

Claims 1, 8-14, 17-20 and 23 are rejected under 35 U.S.C § 102(e) as allegedly being anticipated by Bensaou et al. (US Patent No. 6,747,976 B1), hereinafter "Bensaou". Applicant submits the following in traversal.

In view of the above noted cancellation of claims, the rejection of claims 8-13, 18, 19 and 23 under § 102(e) is moot.

Without conceding the patentability of unamended claims 1, 14 and 20, Applicant amends claims 1, 14 and 20 to incorporate the subject matter of claims 3, 15 and 21, respectively. Hence, the rejection of claims 1, 14 and 20 under § 102(e) is believed to be moot.

Rejection of claim 17, which depends from claim 14, under § 102(e) is also moot.

Therefore, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 102(e) rejection of claims 1, 8-14, 17-20 and 23.

**Rejection of claims 3-6, 15, 17 and 21 under § 103(a) over Bensaou in view of**

**DeClerck**

Claims 3-6, 15, 17 and 21 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Bensaou in view of DeClerck et al. (US Patent No. 6,198,937 B1), hereinafter “DeClerck”. Applicant submits the following in traversal.

Claim 1 (which recites the subject matter of claim 3) recites a method of closed-loop capacity scheduling between a base station and a mobile station, wherein the method comprises, *inter alia*, changing, in a capacity request controller (CRC), the uplink capacity requests for each of the respective flows based on the priority level, the selected traffic class, and the uplink transmission power; and transmitting the changed uplink capacity requests for each of the respective flows from the mobile station to the base station. The Examiner correctly concedes that Bensaou fails to disclose the capacity request for each of the flows with the use of the priority level, the selected traffic class, and the unlink transmission power, but cites col. 8, lines 54-67 of DeClerck to make up for the deficiency. Applicant disagrees at least for the following reasons.

In col. 8, lines 54-67 DeClerck may disclose means for controlling transmission power level of a radio link, means for controlling radio link capacity and that an adjustment of said radio link transmission power level is based on at least one of a frame error rate threshold, symbol error rate threshold and noise rise of said radio link. Additionally, the Examiner contends that DeClerck discloses controlling transmission power level of a radio link based on radio link capacity. However, Applicant submits that the above cited section of DeClerck does not disclose or suggest changing the uplink capacity requests based on the uplink transmission power. In other words, merely controlling the transmission power level of a radio link based on

the radio link capacity does not suggest changing the radio link capacity (which the Examiner alleges as corresponding to the claimed uplink capacity requests) based on the transmission power level (which the Examiner alleges as corresponding to the claimed uplink transmission power).

In view of the foregoing, Applicant respectfully submits that claim 1 is patentable.

For reasons similar to those submitted for claim 1, Applicant submits that DeClerck fails to disclose or suggest at least “a capacity allocation controller (CAC) changing an allocated capacity transmitted from the base station based on an uplink transmission power” and “a capacity allocation controller (CAC) for changing an allocated capacity received from the base station based on an uplink transmission power”, as recited in claims 14 and 20, respectively.

Therefore, claims 14 and 20 are patentable at least for the reasons similar to those submitted for claim 1.

Claims 4-6 and 17, which depend from claims 1 or 17, are patentable at least by virtue of their dependencies.

In view of the above noted cancellation of claims, the rejection of claims 3, 15 and 21 under § 103(a) is moot.

**Rejection of claim 16 under § 103(a) over Bensaou in view of 3GPP**

Claim 16 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Bensaou in view of 3GPP TR 25.896 V1.0.0 (2003-09), hereinafter “3GPP”. Applicant submits the following in traversal.

3GPP does not cure the above noted deficiencies of Bensaou and DeClerck with respect to independent claim 14. Accordingly, claim 16, which depends from claim 14, is patentable at least by virtue of its dependency.

**Rejection of claims 7 and 22 under § 103(a) over Bensaou in view of DeClerck and**

**3GPP**

Claims 7 and 22 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Bensaou in view DeClerck and 3GPP. Applicant submits the following in traversal.

3GPP does not cure the above noted deficiencies of Bensaou and DeClerck with respect to independent claims 1 and 20. Accordingly, claims 7 and 22, which depend from claims 1 and 20, respectively, are patentable at least by virtue of their dependencies.

**Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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**23373**

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